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SERVICE DATE – APRIL 6, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 433X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN CLAY AND
NORMAN COUNTIES, MN

Decided: April 5, 2006

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 5.40-mile line of railroad, between BNSF's milepost 15.60, near Georgetown in Clay County, MN, and milepost 21.00, near Perley in Norman County, MN. Notice of the exemption was served and published in the Federal Register on March 8, 2006 (71 FR 11707). The exemption is scheduled to become effective on April 7, 2006.

The Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) in this proceeding on March 13, 2006. SEA notes that the U.S. Environmental Protection Agency, Region 5 (EPA), has indicated that the proposed project is located in the Special Flood Hazard Area of the Red River and that a Clean Water Act section 402 permit is required. Therefore, EPA recommends a condition requiring BNSF to consult with the Minnesota Pollution Control Agency (MPCA) regarding the section 402 permit, as well as regarding concerns related to section 404 of the Clean Water Act.

SEA further indicates that EPA's statement that wood treated with creosote should be buried in a non-hazardous waste landfill unless otherwise required by the State of Minnesota, pursuant to the Rebuttable Presumption Against Registration under the Federal Insecticide, Fungicide, and Rodenticide Act. EPA also indicates that, if rail steel, electrical and signal housings, bridge work and other materials are to be removed from the proposed project site, recycling of these materials should be addressed and documented. To address the concerns raised by EPA, SEA recommends that a condition be imposed requiring BNSF to contact EPA prior to commencement of any salvage activities on this project regarding removal and salvage methods.

Also according to SEA, MPCA reviewed the proposed project and recommended a number of mitigation measures. To avoid possible impacts to area streams, rivers and wetlands from erosion and stormwater runoff, MPCA recommends that BNSF:

- (1) mulch, seed, and/or sod during salvage activities to establish permanent ground cover and stabilize soils;
- (2) develop a site erosion plan to prevent sediment runoff; and
- (3) pursuant to the Clean Water Act, apply for a section 402 National Pollutant Discharge

Elimination System Permit (NPDES) if the proposed project would disturb one or more acres of land. Accordingly, SEA recommends that a condition be imposed requiring BNSF to contact MPCA prior to commencement of any salvage activities on this project concerning erosion and stormwater runoff mitigation practices to be utilized during salvage activities. To ensure appropriate consideration of the NPDES requirements, SEA also recommends a condition requiring BNSF to consult with MPCA prior to commencement of salvage activities and to comply with the reasonable NPDES requirements.

SEA further states that MPCA also expressed concerns regarding salvage and disposal of the line and recommended that: (1) any removed railroad ties be reused or disposed of in accordance with state rules for disposal of solid and hazardous waste, and (2) all other demolition debris be disposed of in a permitted Demolition Debris Land Disposal Facility pursuant to Minnesota Rules 7035.2825. Finally, SEA notes, MPCA recommends an inspection and evaluation of any maintenance yards, switching areas or other such facilities in the project area for possible oil spills, and, in the event a release is discovered, compliance by BNSF with Minnesota Statute 115.061 and notification to MPCA. Accordingly, SEA recommends imposition of a condition requiring BNSF to consult with MPCA prior to commencement of salvage activities regarding state regulations for disposal of salvaged materials, as well as oil spills, and to comply with the reasonable requirements thereof; in the event a release is discovered, SEA recommends that BNSF immediately contact MPCA and SEA.

SEA also states in the EA that the Minnesota Department of Natural Resources (MDNR) submitted comments stating that remnant prairie elements may exist in the proposed project area. Accordingly, SEA recommends that a condition be imposed requiring BNSF to consult with MDNR regarding potential impacts from salvaging activities to Federally listed threatened and endangered species that may occur in the vicinity of the line. SEA further recommends that BNSF report the results of this consultation in writing to SEA prior to the onset of salvage operations.

SEA further indicated that the Natural Resources Conservation Service (NRCS) has stated that the proposed abandonment will not impact agricultural lands and that a Federal Farmland Policy Protection Act site assessment is not required. However, NRCS notes that, if impacts to wetlands owned or operated by U.S. Department of Agriculture participants are anticipated, BNSF should contact the county Farm Service Agency office (FSA) to consider an application for a third party exemption.¹ Accordingly, SEA recommends imposition of a condition requiring BNSF to contact the Clay County and Norman County FSA offices prior to commencement of any salvage activities regarding potential impacts to wetlands owned or operated by USDA participants and to comply with their reasonable requirements.

¹ NRCS administers the Wetlands Reserve Program, which is a voluntary program to restore and protect wetlands on private property. See Natural Resources Conservation Service, Wetlands Reserve Program at www.nrcs.usda.gov/PROGRAMS/wrp/ (last visited March 6, 2006).

Finally, SEA has determined that the Minnesota Historical Society (State Historic Preservation Office or SHPO), has not completed its evaluation of the potential impact of this project on historic resources. Accordingly, SEA recommends that a condition be imposed requiring that BNSF retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

Comments to the EA were due by March 28, 2006. SEA received a comment filed by MDNR on March 20, 2006, stating that there is one known occurrence of a rare species in the area -- the Black Sandshell Mussel (*Ligumia recta*). However, based on the nature and location of the proposed project, MDNR does not believe that it will affect the species. MDNR also notes that prairie remnants have been identified in the right-of-way of the proposed abandonment. To protect the prairie, MDNR recommends that BNSF: (1) avoid driving or parking vehicles or stockpiling equipment/materials in prairie areas, if at all possible; (2) divert any runoff from the project area away from the prairie; and (3) revegetate disturbed prairie areas with prairie species native to Minnesota or some other non-invasive cover. Accordingly, SEA recommends that the previously recommended condition (No. 6) be modified as follows: BNSF shall conduct salvage activities in the following manner: (1) avoid driving or parking vehicles or stockpiling equipment/materials in prairie areas, if at all possible; (2) divert any runoff from the project area away from the prairie; and (3) revegetate disturbed areas with prairie species native to Minnesota or some other non-invasive cover.

Accordingly, the conditions recommended by SEA in the EA, as modified here, will be imposed.

Finally, on March 30, 2006, Georgetown Farmers Elevator Co. (GFE) filed a protest to the abandonment of this line. However, the protest was filed too late to be considered. Because a petition to revoke an exemption may be filed at any time, GFE's filing will be treated as such. Within 10 days of the service date of this decision, GFE must supplement its March 30 filing with evidence and argument supporting its position that this 2 year out of service exemption should be revoked. See 49 U.S.C. 10502(d) and 49 CFR 1152.50. Should GFE fail to do so, its request for relief could be summarily denied.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the exemption for abandonment of the line described above covered by the notice served and published in the Federal Register on March 8,

2006, is subject to the conditions that BNSF shall: (1) prior to commencement of any salvage activities, consult with the EPA Region 5 regarding removal and salvage methods; (2) prior to commencement of any salvage activities, contact MPCA concerning erosion and stormwater runoff mitigation practices to be utilized during salvage activities; (3) to ensure appropriate consideration of NPDES requirements, contact MPCA prior to commencement of any salvage activities and comply with the reasonable NPDES requirements; (4) contact MPCA prior to commencement of any salvage activities regarding state regulations for disposal of salvaged materials, as well as oil spills, and comply with the reasonable requirements thereof; in the event an oil release is discovered, immediately contact MPCA and SEA; (5) contact the Clay County and Norman County Farm Service Agency offices prior to commencement of any salvage activities regarding potential impacts to wetlands owned or operated by USDA participants and comply with its reasonable requirements; (6) conduct salvage activities in the following manner: (a) avoid driving or parking vehicles or stockpiling equipment/materials in prairie areas, if at all possible; (b) divert any runoff from the project area away from the prairie; and (c) revegetate disturbed areas with prairie species native to Minnesota or some other non-invasive cover; and (7) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the NHPA; report back to SEA regarding any consultation with the SHPO and any other section 106 consulting parties; and not file its consummation notice or initiate any salvage activities related to abandonment until the section 106 process has been completed and the Board has removed this condition.

3. The March 30, 2006 filing by GFE will be treated as a petition to revoke the exemption, but GFE shall supplement the record as discussed herein within 10 days of the service date of this decision.

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary